

Message Text

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E.O. 11652: NA
TAGS: CASC, TU
SUBJ: PRISONER TRANSFER TREATY

1. FOLLOWING IS TURKISH TEXT OF DRAFT PRISONER EXCHANGE
AGREEMENT HANDED TO CHARGE BY ACTING MFA SECGEN AUGUST 11:
BEGIN TEXT:

DRAFT: CONVENTION BETWEEN THE REPUBLIC
OF TURKEY AND THE UNITED STATES OF AMERICA ON
THE ENFORCEMENT OF PENAL JUDGMENTS.

THE REPUBLIC OF TURKEY AND THE UNITED STATES OF
AMERICA, CONSIDERING THAT MUTUAL COOPERATION IN FIGHTING AGAINST
CRIME, AND IN PROMOTING THE SOCIAL REHABILITATION OF OFFENDERS,
BASED ON THE PRINCIPLE OF RESPECT FOR EACH OTHER'S JURIS-
DICTION, WOULD ALSO CONTRIBUTE TO THE DEVELOPMENT OF FRIENDLY
RELATIONS BETWEEN THEIR STATES, HAVE DECIDED TO CONCLUDE A
CONVENTION ON THE ENFORCEMENT OF PENAL JUDGMENTS IN THEIR
RESPECTIVE COUNTRIES AND, TO THAT END, HAVE APPOINTED
AS THEIR PLENIPOTENTIARIES,

THE PRESIDENT OF THE REPUBLIC OF TURKEY:
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THE PRESIDENT OF THE UNITED STATES OF AMERICA:
WHO, HAVING COMMUNICATED TO EACH OTHER THEIR
RESPECTIVE FULL-POWERS, WHICH WERE FOUND IN GOOD AND DUE
FORM, HAVE AGREED AS FOLLOWS:

PART I

DEFINITIONS

ARTICLE I

FOR THE PURPOSES OF THIS CONVENTION:

A. "REQUESTING STATE" OR "SENTENCING STATE" MEANS THE PARTY WHICH REQUESTS THE ENFORCEMENT OF PUNISHMENTS INVOLVING DEPRIVATION OF LIBERTY, CONFISCATION, OTHER MEASURES OR DISQUALIFICATION PRONOUNCED AGAINST THE SENTENCED PERSON AND THE PARTY FROM WHICH THE SENTENCED PERSON IS TO BE TRANSFERRED TO THE REQUESTED STATE.

B. "REQUESTED STATE" MEANS THE PARTY TO WHICH THE SENTENCED PERSON IS TO BE TRANSFERRED AND WHICH ENFORCES THE PUNISHMENTS INVOLVING DEPRIVATION OF LIBERTY, CONFISCATION, OTHER MEASURES OR DISQUALIFICATION PRONOUNCED AGAINST THE SENTENCED PERSON EITHER TRANSFERRED TO OR PRESENT IN ITS TERRITORY.

C. "PENAL JUDGMENT" MEANS ANY FINAL DECISION DELIVERED BY A CRIMINAL COURT OF THE REQUESTING STATE AS A RESULT OF CRIMINAL PROCEEDINGS.

D. "SENTENCED PERSON" MEANS ANY OFFENDER WHO, IN LIMITED OFFICIAL USE

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THE TERRITORY OF ONE OF THE PARTIES, HAS BEEN SENTENCED EITHER TO A PUNISHMENT INVOLVING DEPRIVATION OF LIBERTY, CONFISCATION, OTHER MEASURES OR DISQUALIFICATION, OR ANY OFFENDER ON PAROLE OR WHOSE SENTENCE HAS BEEN SUSPENDED.

E. "SENTENCE" MEANS THE IMPOSITION OF A SANCTION.

F. "SANCTION" MEANS ANY PUNISHMENT INVOLVING DEPRIVATION OF LIBERTY, CONFISCATION, OTHER MEASURES OR DISQUALIFICATION IMPOSED ON A PERSON FOR AN OFFENSE BY A PENAL JUDGMENT IN THE REQUESTING STATE.

G. "DISQUALIFICATION" MEANS ANY LOSS OR SUSPENSION OF A RIGHT OR PROHIBITION OR LOSS OF LEGAL CAPACITY.

H. "DOMICILIARY" MEANS A PERSON WHO HAS BEEN IN THE TERRITORY OF ONE OF THE PARTIES FOR AT LEAST 5 YEARS WITH AN INTENTION TO REMAIN PERMANENTLY THEREIN.

PART II

ENFORCEMENT OF PENAL JUDGMENTS

SECTION I

GENERAL PROVISIONS

ARTICLE 2

COMPETENCE FOR ENFORCEMENT

1. EACH CONTRACTING PARTY SHALL BE COMPETENT IN THE CASES AND UNDER THE CONDITIONS PROVIDED FOR IN THIS CONVENTION TO ENFORCE A SANCTION INVOLVING DEPRIVATION OF LIBERTY, CONFISCATION, OTHER MEASURES OR DISQUALIFICATION IMPOSED IN THE OTHER CONTRACTING PARTY ON ITS NATIONALS.

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2. THIS COMPETENCE CAN ONLY BE EXERCISED FOLLOWING A REQUEST FOR THE ENFORCEMENT BY THE REQUESTING STATE.

ARTICLE 3

CONDITIONS OF ENFORCEMENT

1. A SANCTION SHALL NOT BE ENFORCED BY THE OTHER CONTRACTING PARTY UNLESS UNDER ITS LAW THE ACT FOR WHICH THE SANCTION WAS IMPOSED WOULD BE AN OFFENSE IF COMMITTED ON ITS TERRITORY AND THE PERSON ON WHOM THE SANCTION WAS IMPOSED LIABLE TO PUNISHMENT IF HE HAD COMMITTED THE ACT THERE.

2. IF THE SENTENCE RELATES TO MORE THAN ONE OFFENSE, NOT ALL OF WHICH FULFILL THE REQUIREMENTS OF PARAGRAPH 1, THE SENTENCING STATE SHALL SPECIFY WHICH PART OF THE SANCTION APPLIES TO THE OFFENSES THAT SATISFY THOSE REQUIREMENTS.

ARTICLE 4

CONDITIONS FOR REQUEST

THE SENTENCING STATE MAY REQUEST THE OTHER PARTY TO ENFORCE THE SANCTION ONLY IF THE FOLLOWING CONDITIONS ARE FULFILLED:

A. IF THE PERSON SENTENCED IS THE NATIONAL OF THE REQUESTED STATE,

B. IF THE PERSON SENTENCED IS THE DOMICILIARY OF THE REQUESTED STATE,

C. IF AT LEAST 6 MONTHS OF THE OFFENDER'S SENTENCE REMAIN TO BE LIMITED OFFICIAL USE

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SERVED AT THE TIME OF REQUEST,

D. IF THE ENFORCEMENT OF THE SANCTION IN THE REQUESTED STATE IS LIKELY TO IMPROVE THE PROSPECTS FOR THE SOCIAL REHABILITATION OF THE PERSON SENTENCED,

E. IF, IN CASE THE SENTENCED PERSON IS IN THE TERRITORY OF THE REQUESTING STATE, THERE IS THE CONSENT OF THE PERSON SENTENCED; OR, IF HE IS MINOR OR PLACED UNDER GUARDIANSHIP, THE CONSENT BY HIS PARENT OR GUARDIAN,

F. IF THE REQUESTED STATE HAS DECLARED ITSELF WILLING TO ACCEPT RESPONSIBILITY FOR THE ENFORCMENT OF THAT SANCTION.

G. IF, IN CASES WHERE THE DURATION OF THE PUNISHMENT COULD NOT BE SPECIFIED OR SUCH A DURATION MIGHT HAVE

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SUBSEQUENTLY BEEN FIXED BY THE APPROPRIATE ADMINISTRATIVE AUTHORITIES, THE ENFORCEABLE MINIMUM DURATION OF THE PUNISHMENT HAS BEEN COMMUNICATED.

ARTICLE 5
REFUSAL OF REQUEST

ENFORCEMENT REQUESTED IN ACCORDANCE WITH THE FOREGOING
PROVISIONS MAY NOT BE REFUSED, IN WHOLE OR IN PART, SAVE:

A. WHERE ENFORCEMENT WOULD RUN COUNTER TO THE
FUNDAMENTAL PRINCIPLES OF THE LEGAL SYSTEM OF THE REQUESTED STATE,

B. WHERE THE REQUESTED STATE CONSIDERS THE OFFENSE FOR
WHICH THE SENTENCE WAS PASSED TO BE OF A POLITICAL NATURE OR
A PURELY MILITARY ONE OR CONNECTED WITH THOSE OFFENSES,

C. WHERE THE REQUESTED STATE CONSIDERS THAT THERE ARE
SUBSTANTIAL GROUNDS FOR BELIEVING THAT THE SENTENCE WAS
BROUGHT ABOUT OR AGGRAVATED BY CONSIDERATIONS OF RACE, RELIGION,
NATIONALITY OR POLITICAL OPINION,

D. WHERE THE ENFORCEMENT WOULD BE CONTRARY TO THE
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INTERNATIONAL UNDERTAKINGS OF THE REQUESTED STATE,

E. WHERE THE ACT IS ALREADY THE SUBJECT OF PROCEEDINGS
IN THE REQUESTED STATE OR WHERE THE REQUESTED STATE DECIDES TO
INSTITUTE PROCEEDINGS IN RESPECT OF THE ACT,

F. WHERE THE COMPETENT AUTHORITIES IN THE REQUESTED
STATE HAVE DECIDED NOT TO TAKE PROCEEDINGS OR TO DROP
PROCEEDINGS ALREADY BEGUN, IN RESPECT OF THE SAME ACT,

G. WHERE THE ACT WAS COMMITTED OUTSIDE THE TERRITORY
OF THE REQUESTING STATE,

H. WHERE THE REQUESTED STATE IS UNABLE TO ENFORCE THE
SANCTION,

I. WHERE UNDER THE LAW OF THE REQUESTED STATE THE
SANCTION IMPOSED CAN NO LONGER BE ENFORCED BECAUSE OF THE
LAPSE OF TIME,

J. WHERE THE AGE OF THE PERSON SENTENCED AT THE TIME
OF THE OFFENSE WAS SUCH THAT HE COULD NOT HAVE BEEN
PROSECUTED IN THE REQUESTED STATE,

K. WHERE THE ENFORCEMENT IS CONTRARY TO THE RULE
"NE BIS IN IDEM".

SECTION 2

EFFECTS OF THE TRANSFER OF ENFORCEMENT

ARTICLE 6

RULE OF SPECIALITY

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1. A SENTENCED PERSON DETAINED IN THE REQUESTING STATE WHO HAS BEEN SURRENDERED TO THE REQUESTED STATE FOR THE PURPOSE OF ENFORCEMENT SHALL NOT BE PROCEEDED AGAINST, SENTENCED OR DETAINED WITH A VIEW TO THE CARRYING OUT OF A SENTENCE OF DETENTION ORDER FOR ANY OFFENSE COMMITTED PRIOR TO HIS SURRENDER OTHER THAN THAT FOR WHICH THE SENTENCE TO BE ENFORCED WAS IMPOSED, NOR SHALL HE FOR ANY OTHER REASON BE RESTRICTED IN HIS PERSONAL FREEDOM, EXCEPT IN THE FOLLOWING CASES:

A. WHEN THE REQUESTING STATE CONSENTS. A REQUEST FOR CONSENT SHALL BE SUBMITTED, ACCOMPANIED BY ALL RELEVANT DOCUMENTS AND A LEGAL RECORD OF ANY STATEMENT MADE BY THE PERSON SENTENCED BEFORE A COURT, TO THE REQUESTING STATE. CONSENT SHALL BE GIVEN WHEN THE OFFENSE FOR WHICH IT IS REQUESTED WOULD ITSELF BE SUBJECT TO EXTRADITION UNDER THE LAW OF THE REQUESTING STATE OR WHEN EXTRADITION WOULD BE EXCLUDED ONLY BY REASON OF THE AMOUNT OF THE PUNISHMENT,

B. WHEN THE SENTENCED PERSON, HAVING HAD AN OPPORTUNITY TO LEAVE THE TERRITORY OF THE STATE TO WHICH HE HAS BEEN SURRENDERED, HAS NOT DONE SO WITHIN 45 DAYS OF HIS FINAL DISCHARGE, OR IF HE HAS RETURNED TO THAT TERRITORY AFTER LEAVING IT.

2. THE REQUESTED STATE MAY, HOWEVER, TAKE ANY MEASURE NECESSARY TO REMOVE THE PERSON FROM ITS TERRITORY, OR ANY MEASURE NECESSARY UNDER ITS LAW TO PREVENT ANY LEGAL EFFECTS OF LAPSE OF TIME.

ARTICLE 7

REVERSION OF THE RIGHT OF ENFORCEMENT

THE RIGHT OF ENFORCEMENT SHALL REVERT TO THE REQUESTING STATE:

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A) IF IT WITHDRAWS ITS REQUEST BEFORE THE REQUESTED STATE HAS INFORMED IT OF AN INTENTION TO TAKE ACTION ON THE REQUEST;

B) IF THE REQUESTED STATE NOTIFIES A REFUSAL TO TAKE

ACTION ON THE REQUEST:

C) IF THE REQUESTED STATE EXPRESSLY RELINQUISHES ITS RIGHT OF ENFORCEMENT. SUCH RELINQUISHMENT SHALL ONLY BE POSSIBLE IF BOTH STATES AGREE OR IF ENFORCEMENT IS NO LONGER POSSIBLE IN THE REQUESTED STATE. IN THE LATTER CASE, A RELINQUISHMENT DEMANDED BY THE REQUESTING STATE SHALL BE COMPULSORY;

D) IF IT IS DECIDED BY THE COURTS OF THE REQUESTED STATE THAT THE TRANSFER WAS NOT IN ACCORDANCE WITH THIS CONVENTION OR ITS LAWS;

E) IF THE TRANSFER OF THE SENTENCED PERSON IS NOT ACCOMPLISHED AS PROVIDED IN THE ARTICLE 28, PARAGRAPH 2.

ARTICLE 8

CESSATION OF ENFORCEMENT

1. THE COMPETENT AUTHORITIES OF THE REQUESTED STATE SHALL DISCONTINUE ENFORCEMENT AS SOON AS THEY HAVE KNOWLEDGE OF ANY PARDON, AMNESTY OR APPLICATION FOR REVIEW OF SENTENCE OR ANY OTHER DECISION BY REASON OF WHICH THE SANCTION CEASES TO BE ENFORCEABLE.

2. THE REQUESTING STATE SHALL WITHOUT DELAY INFORM THE REQUESTED STATE OF ANY DECISION OR PROCEDURAL MEASURE LIMITED OFFICIAL USE

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ON ITS TERRITORY THAT CAUSES THE RIGHT OF ENFORCEMENT TO LAPSE IN ACCORDANCE WITH THE PRECEDING PARAGRAPH.

ARTICLE 9.

REVIEW OF A SENTENCE AND PARDON

1. THE SENTENCING STATE ALONE SHALL HAVE THE RIGHT TO DECIDE ON ANY APPLICATION FOR REVIEW OF A SENTENCE.

2. THE SENTENCING STATE SHALL HAVE THE POWER TO EXERCISE THE RIGHT OF AMNESTY OR PARDON.

EXCEPT IN CASES OF INVALIDITY, PERPETUAL ILLNESS OR OLD-AGE, THE REQUESTED STATE MAY NOT GRANT INDIVIDUAL PARDON TO THE SENTENCED PERSON IN THE COURSE OF THE ENFORCEMENT.

ARTICLE 10

EXPENSES

ANY EXPENSES RESULTING FROM THE TRANSFER OF THE SENTENCED PERSON OR ANY EXPENSES INCURRED FOR THE ENFORCEMENT IN WHOLE OR FOR THE COMPLETION OF THE SANCTION SHALL BE MET BY THE REQUESTED STATE.

PART III

REQUEST FOR ENFORCEMENT

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SECTION I

PROCEDURE

ARTICLE II

COMPETENT AUTHORITY

COMPETENT AUTHORITY IN THE EXERCISE OF THE FUNCTIONS PROVIDED IN THIS CONVENTION SHALL BE THE MINISTRIES OF JUSTICE OF THE CONTRACTING PARTIES.

WHERE THE TRANSFER OF ENFORCEMENT OF A SANCTION IS, ACCORDING TO THE LAW OF ONE OF THE CONTRACTING PARTIES, SUBJECT TO THE APPROVAL OF THE APPROPRIATE AUTHORITIES OTHER THAN THE CENTRAL GOVERNMENT AUTHORITY, THEN SUCH APPROVAL SHALL ALSO HAVE TO BE OBTAINED.

ARTICLE 12

IMPLEMENTATION OF PROVISIONS

THE FORMALITIES RELATED TO THE IMPLEMENTATION OF THE
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PROVISIONS OF THIS CONVENTION SHALL BE COMMENDED BY THE COM-
PETENT AUTHORITY OF THE REQUESTING STATE.

NO PROVISIONS OF THIS CONVENTION SHALL PREVENT A
SENTENCED PERSON FROM SUBMITTING A REQUEST TO THE SENTENCING
STATE FOR THE TRANSFER OF ENFORCEMENT.

ARTICLE 13

CONTINUATION OF ENFORCEMENT IN THE REQUESTING STATE

THE SENTENCING STATE MAY CONTINUE ENFORCEMENT OF A
SANCTION, WHEN THE OFFENDER IS ALREADY DETAINED WITHIN THAT
STATE AT THE MOMENT OF THE PRESENTATION OF THE REQUEST, UNTIL
THE TRANSFER TAKES PLACE OR THE SENTENCE IS COMPLETED.

ARTICLE 14

FORM OF REQUESTS

ALL REQUEST SPECIFIED IN THIS CONVENTION SHALL BE MADE
IN WRITING. ALL COMMUNICATIONS NECESSARY FOR THE APPLICATION
OF THIS CONVENTION BETWEEN THE COMPETENT AUTHORITIES OF THE
CONTRACTING PARTIES SHALL BE SENT THROUGH DIPLOMATIC CHANNELS.

ARTICLE 15

DOCUMENTS OF REQUEST

THE REQUEST FOR ENFORCEMENT SHALL BE ACCOMPANIED BY:

A) THE ORIGINAL, OR A CERTIFIED COPY, OF THE SENTENCE WHOSE
ENFORCEMENT IS REQUESTED,
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B) A STATEMENT THAT THE SANCTION IS ENFORCEABLE, AND
SPECIFYING THE PART OF THE SENTENCE ALREADY SERVED,

C) THE ORIGINAL, OR A CERTIFIED COPY, OF ALL OR PART
OF THE CRIMINAL FILE COMPRISING INFORMATION ABOUT THE OFFENDER'S
BEHAVIOR IN THE PENITENTIARY INSTITUTION,

D) IF THE OFFENDER IS IN THE TERRITORY OF THE REQUESTING
STATE, A STATEMENT VERIFYING THE OFFENDER'S OR HIS PARENT'S
OR GUARDIAN'S EXPRESS CONSENT TO HIS TRANSFER FOR ENFORCEMENT.

ARTICLE 16

ADDITIONAL INFORMATION

IF THE REQUESTED STATE CONSIDERS THAT THE INFORMATION
SUPPLIED BY THE REQUESTING STATE IS NOT ADEQUATE TO ENABLE
IT TO APPLY THE PROVISIONS OF THIS CONVENTION, IT SHALL ASK
FOR THE NECESSARY ADDITIONAL INFORMATION. THE REQUESTED
STATE MAY PRESCRIBE A DATE FOR THE RECEIPT OF SUCH INFORMATION.

ARTICLE 17: LANGUAGE OF REQUESTS AND DOCUMENTS.

1. NO TRANSLATION OF REQUESTS FOR ENFORCEMENT OR OF
SUPPORTING DOCUMENTS RELATED THERETO SHALL BE REQUIRED.

TRANSLATED COPIES IN THE LANGUAGE OF THE REQUESTING
STATE OF THE DECISION ON THE REQUEST DELIVERED BY THE
REQUESTED STATE AND THE SUPPORTING DOCUMENTS SHALL BE
TRANSMITTED TO THE REQUESTING STATE.

2. IN CASE THE SENTENCED PERSON IS IN THE TERRITORY
OF THE REQUESTED STATE, THE DOCUMENTS PREPARED ACCORDING TO
THIS CONVENTION SHALL BE FORWARDED TO THE REQUESTED STATE
TOGETHER WITH THEIR TRANSLATED COPIES IN THE LANGUAGE OF
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THE REQUESTED STATE.

ARTICLE 18: NOTIFICATIONS

THE AUTHORITIES OF THE REQUESTED STATE SHALL PROMPTLY
INFORM THOSE OF THE REQUESTING STATE OF THE ACTION TAKEN ON
REQUEST FOR ENFORCEMENT.

THE AUTHORITIES OF THE REQUESTED STATE SHALL TRANSMIT
TO THOSE OF THE REQUESTING STATE A DOCUMENT CERTIFYING THAT
THE SANCTION HAS BEEN ENFORCED.

SECTION 2: PROVISIONAL MEASURES: A) PROVISIONAL DEPRIVATION
OF LIBERTY

ARTICLE 19: DEPRIVATION OF LIBERTY IN THE REQUESTING STATE.

IF THE SENTENCED PERSON IS PRESENT IN THE TERRITORY
OF THE REQUESTING STATE AND NOT UNDER ARREST AFTER NOTIFICATION
OF THE ACCEPTANCE OF ITS REQUEST FOR ENFORCEMENT OF A SENTENCE
INVOLVING DEPRIVATION OF LIBERTY IS RECEIVED, THAT STATE MAY,
IF IT DEEMS IT NECESSARY IN ORDER TO ENSURE ENFORCEMENT,
ARREST HIM WITH A VIEW TO HIS TRANSFER.

ARTICLE 20. DEPRIVATION OF LIBERTY IN THE REQUESTED STATE.

1-WHEN THE REQUESTING STATE HAS REQUESTED ENFORCEMENT,
THE REQUESTED STATE MAY ARREST THE PERSON SENTENCED:

A) IF, UNDER THE LAW OF THE REQUESTED STATE, THE
OFFENCE IS ONE WHICH JUSTIFIES REMAND IN CUSTODY, AND

B) IF, THERE IS A DANGER OF ABSCONDENCE.
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2- WHEN THE REQUESTING STATE ANNOUNCES ITS INTENTION TO
REQUEST ENFORCEMENT, THE REQUESTED STATE MAY, ON APPLICATION BY
THE REQUESTING STATE, ARREST THE PERSON SENTENCED, PROVIDED
THAT REQUIREMENTS UNDER (A) AND (B) OF THE PRECEDING PARA-
GRAPH ARE SATISFIED. THE SAID APPLICATION SHALL STATE THE
OFFENCE WHICH LED TO THE JUDGMENT AND THE TIME AND PLACE OF
ITS PERPETRATION, AND CONTAIN AS ACCURATE A DESCRIPTION AS
POSSIBLE OF THE PERSON SENTENCED. IT SHALL ALSO CONTAIN A
BRIEF STATEMENT OF THE FACTS ON WHICH THE JUDGMENT IS BASED.

ARTICLE 21: DURATION OF CUSTODY IN THE REQUESTED STATE.

1- THE PERSON SENTENCED SHALL BE HELD IN CUSTODY
IN ACCORDANCE WITH THE LAW OF THE REQUESTED STATE; THE LAW
OF THAT STATE SHALL ALSO DETERMINE THE CONDITIONS ON WHICH
HE MAY BE RELEASED.

2- THE PERSON IN CUSTODY SHALL IN ANY EVENT BE RELEASED:

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A) AFTER A PERIOD EQUAL TO THE PERIOD OF DEPRIVATION OF LIBERTY IMPOSED IN THE JUDGMENT;

B) IF HE WAS ARRESTED IN PURSUANCE OF ARTICLE 20, PARAGRAPH 2, AND THE REQUESTED STATE DID NOT RECEIVE, WITHIN 30 DAYS FROM THE DATE OF THE ARREST, THE REQUEST TOGETHER WITH THE DOCUMENTS SPECIFIED IN ARTICLE 15.

B) SEIZURE

ARTICLE 22: SEIZURE UPON REQUEST.

1-IF THE REQUESTING STATE HAS REQUESTED ENFORCEMENT OF A CONFISCATION OF PROPERTY, THE REQUESTED STATE MAY PROVISIONALLY SEIZE THE PROPERTY IN QUESTION, ON CONDITION THAT ITS OWN LAW PROVIDES FOR SEIZURE IN RESPECT OF SIMILAR FACTS.

2-SEIZURE SHALL BE CARRIED OUT IN ACCORDANCE WITH THE LAW OF THE REQUESTED STATE. THE SAID LAW SHALL ALSO DETERMINE THE CONDITIONS ON WHICH THE SEIZURE MAY BE LIFTED.

PART IV: ENFORCEMENT OF SANCTION

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SECTION 1: GENERAL CLAUSES

ARTICLE 23: COURT DECISION.

1-A SANCTION IMPOSED IN THE REQUESTING STATE SHALL NOT BE ENFORCED IN THE REQUESTED STATE EXCEPT BY A DECISION OF THE COURT OF THE REQUESTED STATE.

2-THE CASE SHALL BE BROUGHT BEFORE THE COURT IF THE REQUESTED STATE SEES FIT TO TAKE ACTION ON THE REQUEST FOR ENFORCEMENT.

ARTICLE 24: PROCEDURE BEFORE THE COURT.

BEFORE A COURT TAKES A DECISION UPON A REQUEST FOR ENFORCEMENT, THE PUBLIC PROSECUTOR AND THE SENTENCED PERSON SHALL BE GIVEN THE OPPORTUNITY TO STATE THEIR VIEWS. IF THE SENTENCED PERSON IS IN THE TERRITORY OF THE REQUESTED STATE, UPON APPLICATION, HE SHALL BE HEARD BY THE COURT EITHER BY LETTERS ROGATORY OR IN PERSON, OR, IF HE IS IN THE REQUESTING STATE, HE SHALL BE HEARD BY THE COURT BY LETTERS ROGATORY.

ARTICLE 25: CONDITIONS TO BE DETERMINED BY THE COURT.

1- THE COURT WHICH IS DEALING WITH THE CASE IN THE REQUESTED STATE SHALL SATISFY ITSELF AND SPECIFY IN ITS DECISION:

A) THAT THE SANCTION WHOSE ENFORCEMENT IS REQUESTED WAS IMPOSED IN A FINAL CRIMINAL JUDGMENT,

B) THAT THE REQUIREMENTS OF ARTICLES 3 AND 4 ARE MET,

C) THAT THE ENFORCEMENT WOULD NOT RUN COUNTER TO THE LIMITED OFFICIAL USE

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FUNDAMENTAL PRINCIPLES OF THE LEGAL SYSTEM OF THE REQUESTED STATE,

D) THAT THE PERSON SENTENCED HAS NOT BEEN PREVIOUSLY ACQUITTED IN RESPECT OF THE OFFENCE WHICH IS UNDER REVIEW BY THE COURT, WHETHER THE SANCTION HAS BEEN ENFORCED, OR PARDONED OR WAS GRANTED AN AMNESTY OR WAS AFFECTED BY LAPSE OF TIME,

E) THAT THE OTHER CONDITIONS OF ENFORCEMENT PROVIDED FOR IN THIS CONVENTION ARE MET.

2- THE JUDICIAL DECISIONS TAKEN WITH RESPECT TO THE REQUESTED ENFORCEMENT SHALL BE APPEALABLE.

ARTICLE 26: COURT FINDINGS.

THE REQUESTED STATE SHALL BE BOUND BY THE FINDINGS AS TO THE FACTS INsofar AS THEY ARE STATED IN THE SENTENCE OR INsofar AS THE SENTENCE IS IMPLIEDLY BASED ON THEM.

SECTION 2

ENFORCEMENT OF SANCTIONS INVOLVING DEPRIVATION OF LIBERTY

ARTICLE 27

SANCTION TO BE ENFORCED

1. THE ENFORCEMENT SHALL BE GOVERNED BY THE LAW OF THE REQUESTED STATE AND THAT STATE SHALL ALONE BE COMPETENT TO TAKE ALL APPROPRIATE DECISIONS INCLUDING THOSE RELATED TO CONDITIONAL RELEASE,

2. IF THE REQUEST FOR ENFORCEMENT IS ACCEPTED, THE COURT SHALL AT THE SAME TIME DETERMINE THE SANCTION, WHICH SHALL BE SUBSTITUTED-FOR THE SANCTION IMPOSED BY THE LIMITED OFFICIAL USE

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REQUESTING STATE INVOLVING THE DEPRIVATION OF LIVERTY. THE COURT OF THE REQUESTED STATE, IN DETERMINING THE SUBSTITUTE SANCTION, SHALL TAKE INTO CONSIDERATION:

A) THE SANCTION PRESCRIBED BY ITS OWN LAW FOR THE SAME OFFENCE,

B) DURATION OF THE SANCTION INVOLVING THE DEPRIVATION OF LIBERTY AS IMPOSED IN THE JUDGMENT,

C) FACTS AND LEGAL CAUSES SPECIFIED IN THE JUDGMENT, AS MITIGATING OR AGGRAVATING CIRCUMSTANCES. NEVERTHELESS, THE REQUESTED STATE MAY NOT CONVERT A SANCTION INVOLVING DEPRIVATION OF LIBERTY INTO A FINE.

THE SANCTION TO BE DETERMINED BY THE COURT OF THE REQUESTED STATE MAY IN NO WAY BE INFERIOR TO THE MINIMUM DURATION PRESCRIBED IN THE LAW OF THE REQUESTING STATE WITH THE EXCEPTION OF CASES WHERE, IN THE JUDGMENT, THE SANCTION HAS BEEN ATTENUATED DUE TO THE EXISTENCE OF LEGAL MITIGATING CIRCUMSTANCES. IF THIS LATTER SANCTION IS LESS THAN THE MINIMUM WHICH MAY BE PRONOUNCED UNDER THE LAW OF THE REQUESTED STATE, THE COURT SHALL BE BOUND BY THAT MINIMUM AND SHALL IMPOSE A SANCTION CORRESPONDING TO THE SANCTION IMPOSED IN THE REQUESTING STATE.

3. IN DETERMINING THE SANCTION, THE COURT SHALL NOT AGGRAVATE THE PENAL SITUATION OF THE PERSON ENTENCED AS IT RESULTS FROM THE DECISION DELIVERED IN THE REQUESTING STATE.

4. ANY PART OF THE SANCTION IMPOSED IN THE REQUESTING STATE AND ANY TERM OF PROVISIONAL CUSTODY, SERVED BY THE LIMITED OFFICIAL USE

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SENTENCED PERSON SUBSEQUENT TO THE SENTENCE, SHALL BE DEDUCTED IN FULL. THE SAME SHALL APPLY IN RESPECT OF ANY PERIOD DURING WHICH THE PERSON SENTENCED WAS REMANDED IN CUSTODY IN THE REQUESTING STATE BEFORE BEING SENTENCED INsofar AS THE LAW OF THAT STATE SO REQUIRES.

ARTICLE 28

TRANSFER AFTER THE ACCEPTANCE OF REQUEST

1. THE SENTENCED PERSON DETAINED IN THE REQUESTING STATE SHALL BE TRANSFERRED TO THE REQUESTED STATE UPON:

A) NOTIFICATION OF ACCEPTANCE OF THE REQUEST FOR ENFORCEMENT, AND

B) SUBMISSION BY THE REQUESTED STATE OF THE

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ORIGINAL OR CERTIFIED COPY OF COURT DECISION RENDERED IN ACCORDANCE WITH THE PROVISIONS OF THE ARTICLES 23, 24, 25 AND 27, AND

C) PAYMENT OF THE FINE, IN CASES WHERE THE PENAL JUDGMENT COMPRISES SUCH A FINE FOR THE SAME OFFENSE ALONG WITH THE SANCTION INVOLVING DEPRIVATION OF LIBERTY, WHOSE ENFORCEMENT IS TO BE TRANSFERRED TO THE REQUESTED STATE.

2. THE DATE AND PLACE OF TRANSFER OF THE SENTENCED PERSON SHALL BE DETERMINED BY THE CONTRACTING PARTIES ON MUTUAL AGREEMENT.

IF THE TRANSFER OF THE SENTENCED PERSON IS NOT ACCOMPLISHED ACCORDINGLY, THE RIGHT OF ENFORCEMENT SHALL ALSO REVERT TO THE REQUESTING STATE.

SECTION 3

ENFORCEMENT OF CONFISCATIONS

ARTICLE 29

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CONFISCATION OF OBJECTS

1. WHEN THE REQUEST FOR ENFORCEMENT CONCERNS THE CONFISCATION OF A SPECIFIC OBJECT, THE COURT MAY ORDER THE CONFISCATION OF THAT OBJECT ONLY INsofar AS SUCH CONFISCATION IS AUTHORIZED BY THE LAW OF THE REQUESTED STATE FOR THE SAME OFFENSE.

2. HOWEVER, THE COURT MAY MAINTAIN THE CONFISCATION ORDERED IN THE REQUESTING STATE WHEN THIS SANCTION IS NOT PROVIDED FOR IN THE LAW OF THE REQUESTED STATE FOR THE SAME OFFENSE BUT THIS LAW ALLOWS FOR THE IMPOSITION OF MORE SEVERE SANCTION.

ARTICLE 30

ENFORCEMENT OF CONFISCATIONS

1. THE CONFISCATED OBJECTS SHALL BE THE PROPERTY OF THE REQUESTED STATE, WITHOUT PREJUDICE TO ANY RIGHTS OF THE THIRD PARTIES.

2. PROPERTY CONFISCATED WHICH IS OF A SPECIAL INTEREST MAY BE REMITTED TO THE REQUESTED STATE IF IT SO REQUIRES.

SECTION 4

ENFORCEMENT OF DISQUALIFICATIONS

ARTICLE 31

ENFORCMENT

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1. WHERE A REQUEST FOR ENFORCEMENT OF A DISQUALIFICATION IS MADE, SUCH DISQUALIFICATION IMPOSED IN THE REQUESTING STATE MAY BE GIVEN EFFECT IN THE REQUESTED STATE ONLY IF THE LAW OF THE LATTER STATE ALLOWS FOR DISQUALIFICATION FOR THE OFFENSE IN QUESTION.

2. THE COURT DEALING WITH THE CASE SHALL APPRAISE THE EXPEDIENCY OF ENFORCING THE DISQUALIFICATION IN THE TERRITORY OF ITS OWN STATE.

ARTICLE 32

DURATION OF DISQUALIFICATION

1. IF THE COURT ORDERS ENFORCEMENT OF DISQUALIFICATION IT SHALL DETERMINE THE DURATION THEREOF WITHIN THE LIMITS PRESCRIBED BY ITS OWN LAW, BUT MAY NOT EXCEED THE LIMITS LAID DOWN IN THE SENTENCE IMPOSED IN THE REQUESTING STATE.

2. THE COURT MAY ORDER THE DISQUALIFICATION TO BE ENFORCED IN RESPECT OF ONLY SOME OF THE RIGHTS IF THE SENTENCE RENDERED INVOLVES THE LOSS OR SUSPENSION OF TWO OR MORE SUCH RIGHTS.

PART V

FINAL PROVISIONS

ARTICLE 33

ENTERING INTO FORCE

1. THIS CONVENTION SHALL BE SUBJECT TO RATIFICATION. THE EXCHANGE OF RATIFICATIONS SHALL TAKE PLACE IN.....

2. THIS CONVENTION SHALL ENTER INTO FORCE THIRTY
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DAYS AFTER THE EXCHANGE OF RATIFICATIONS AND SHALL REMAIN IN FORCE INDEFINITELY.

3. EITHER CONTRACTING PARTY MAY DENOUNCE THE CONVENTION BY GIVING PRIOR WRITTEN NOTICE TO THE OTHER CONTRACTING PARTY, SUCH DENUNCIATION SHALL TAKE EFFECT SIX MONTHS AFTER THE RECEIPT OF THE NOTIFICATION.

IN WITNESS WHEREOF, THE RESPECTIVE PLENIPOTENTIARIES
OF THE CONTRACTING PARTIES HAVE SIGNED THE PRESENT CONVENTION
AND HAVE AFFIXED THERETO THEIR SEALS.

DONE AT.....IN DUPLICATE, THE.....
.....DAY OF....., IN THE TURKISH AND
ENGLISH LANGUAGES, BOTH TEXTS BEING EQUALLY AUTHENTIC.

FOR THE GOVERNMENT OF	FOR THE GOVERNMENT
THE REPUBLIC OF TURKEY	OF THE UNITED
	STATES OF AMERICA

END TEXT
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Message Attributes

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